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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff, - v.- UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	ANSWER **ECF CASE** 05 Civ. 5468 (JSR)

Associated Press v. United States Department of Defense Doc. 6

Defendant the United States Department of Defense ("DOD" or "defendant"), by its attorney, David N. Kelley, United States Attorney for the Southern District of New York, answers the complaint of the Associated Press ("AP" or "plaintiff") upon information and belief as follows:

1. The first three sentences of paragraph 1 of the complaint contain plaintiff's characterization of the nature of this action and its request for relief, to which no response is required. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of paragraph 1 of the complaint.

2. Denies the allegations in paragraph 2 of the complaint, except admits that there are currently approximately 505 individuals being detained by DOD at the Guantanamo

Bay Naval Air Station, Cuba ("Guantanamo"); that DOD established Combatant Status Review Tribunals ("CSRTs") as a mechanism by which detainees at Guantanamo could contest their classification as enemy combatants; and that DOD has established Administrative Review Boards ("ARBs") as a mechanism for annually assessing whether enemy combatants continue to pose a threat to the United States or its allies or whether other factors warrant their continued detention.

3. Denies the allegations in paragraph 3 of the complaint, except admits that CSRTs have been completed for all detainees currently held at Guantanamo; that, as of August 29, 2005, 240 detainees have been through ARB hearings and 125 of those detainees have been through the complete ARB process; that there are currently more than 500 detainees at Guantanamo; and that DOD has reported that, as of August 29, 2005, six detainees have departed Guantanamo as a result of the ARB process.

4. Denies the allegations in paragraph 4 of the complaint, except admits that DOD received FOIA requests from AP dated November 16, 2004, and January 18, 2005, and respectfully refers the Court to those requests, and to DOD's responses to them, for complete and accurate statements of the contents of the requests and of DOD's responses.

5. Denies the allegations in paragraph 5 of the complaint, except states that no response is required to that portion of paragraph 5 that constitutes AP's characterization of, and claimed support for, its request for relief.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the complaint.

7. Admits the allegations in the first sentence of paragraph 7 of the

complaint. States that the second sentence of paragraph 7 asserts a conclusion of law, to which no response is required.

8. Paragraph 8 of the complaint contains plaintiff's allegations concerning jurisdiction, to which no response is required.

9. Paragraph 9 of the complaint contains plaintiff's allegations concerning venue, to which no response is required.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint, except admits that more than 500 individuals are currently detained at Guantanamo and four detainees have been charged with violations of the laws of war.

11. Admits the allegations in the first sentence of paragraph 11 of the complaint. States that the allegations in the second sentence of paragraph 11 of the complaint are conclusions of law to which no response is required, and respectfully refers the Court to the decisions in Rasul v. Bush, 124 S. Ct. 2686 (2004), and Hamdi v. Rumsfeld, 124 S. Ct. 2633 (2004), for a complete and accurate statement of their contents.

12. Denies the allegations in paragraph 12 of the complaint, except admits that on July 7, 2004, DOD announced the formation of the Combatant Status Review Tribunal, and admits that from August 2004 through January 2005, approximately five-hundred fifty-eight (558) tribunals convened, and that as a result of those proceedings, thirty-eight (38) detainees were determined to no longer meet the criteria to be classified as enemy combatants.

13. Denies the allegations in paragraph 13 of the complaint, except admits that DOD established ARBs as a mechanism for annually assessing whether enemy combatants

continue to pose a threat to the United States or its allies or whether other factors warrant their continued detention.

14. Denies the allegations in paragraph 14 of the complaint, and respectfully refers the Court to the decision in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005), for complete and accurate statement of its contents. But see Khalid v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005).

15. Denies the allegations in paragraph 15 of the complaint, except admits that as of August 29, 2005, six detainees have departed Guantanamo as a result of the ARB process.

16. Denies the allegations in paragraph 16 of the complaint, and respectfully refers the Court to the reports of Amnesty International and Human Rights Watch for a complete and accurate statement of their contents.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the complaint.

18. Denies the allegations in paragraph 18 of the complaint, except admits that AP submitted a FOIA request dated November 16, 2004 to DOD, and respectfully refers the Court to that request for a complete and accurate statement of its contents.

19. Denies the allegations in paragraph 19 of the complaint, except admits that AP submitted a FOIA request dated January 18, 2005 to DOD, and respectfully refers the Court to that request for a complete and accurate statement of its contents.

20. Denies the allegations in paragraph 20 of the complaint, except admits that AP sent its November 16, 2004 and January 18, 2004 letters by fax, and respectfully refers the Court to those letters requests for a complete and accurate statement of their contents.

21. Denies the allegations in paragraph 21 of the complaint, except admits that DOD sent a letter dated November 24, 2004 to AP, and respectfully refers the Court to DOD's November 24, 2004 letter for a complete and accurate statement of its contents.

22. Denies the allegations in paragraph 22 of the complaint.

23. Denies the allegations in paragraph 23 of the complaint, except admits that in a telephone conversation with AP's counsel on or about April 20, 2005, an employee in DOD's FOIA office stated that AP's November 16, 2004 FOIA request had been tasked out for the purpose of responding to the request and that the FOIA office did not know the status of the search or review process.

24. Denies the allegations in paragraph 24 of the complaint, except admits that AP submitted to DOD a letter dated April 22, 2005, and respectfully refers the Court to AP's April 22, 2005 letter for a complete and accurate statement of its contents.

25. Denies the allegations in paragraph 25 of the complaint, except admits that DOD sent AP an undated letter in response to AP's April 22, 2005 letter, and respectfully refers the Court to DOD's letter for a complete and accurate statement of its contents.

26. Denies the allegations in paragraph 26 of the complaint.

27. Denies the allegations in paragraph 27 of the complaint, except admits that DOD sent a letter dated January 19, 2005, and respectfully refers the Court to DOD's January 19, 2005 letter for a complete and accurate statement of its contents.

28. Denies the allegations in paragraph 28 of the complaint.

29. Denies the allegations in paragraph 29 of the complaint, except admits that AP submitted a letter dated April 15, 2005 to DOD, and respectfully refers the Court to AP's

April 15, 2005 letter for a complete and accurate statement of its contents.

30. Denies the allegations in paragraph 30 of the complaint, except admits that DOD sent AP an undated letter in response to AP's April 15, 2005 letter, and respectfully refers the Court to DOD's letter for a complete and accurate statement of its contents.

31. Admits the allegations in paragraph 31 of the complaint.

32. Denies the allegations in paragraph 32 of the complaint, except admits that as of June 9, 2005, the date on the complaint, more than 20 days had passed since AP sent its April 15 and April 22, 2005 letters.

33. The allegations in paragraph 33 of the complaint assert a conclusion of law to which no response is required.

34. DOD repeats, realleges, and incorporates its responses to the allegations in paragraphs 1 through 33 as though fully set forth in this paragraph.

35. Denies the allegations in paragraph 35 of the complaint.

36. DOD repeats, realleges, and incorporates its responses to the allegations in paragraphs 1 through 35 as though fully set forth in this paragraph.

37. Denies the allegations in paragraph 37 of the complaint.

38. DOD repeats, realleges, and incorporates its responses to the allegations in paragraphs 1 through 37 as though fully set forth in this paragraph.

39. Denies the allegations in paragraph 39 of the complaint.

40. DOD repeats, realleges, and incorporates its responses to the allegations in paragraphs 1 through 39 as though fully set forth in this paragraph.

41. Denies the allegations in paragraph 41 of the complaint.

42. The allegations in the unnumbered paragraphs following paragraph 41 of the complaint and commencing with the word "WHEREFORE" state plaintiff's request for relief, to which no response is required. To the extent a response is required, denies that plaintiff is entitled to the requested relief, or to any other relief.

WHEREFORE, defendant demands judgment dismissing the complaint and granting such other and further relief as this Court deems just and proper, including costs and disbursements.

Dated: New York, New York
August 30, 2005

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